

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Subsection (c) and Add Subsection (e) of Section 27.80
Title 14, California Code of Regulations
Re: Ocean Salmon Recreational Fishing – April Season
And Ocean Salmon Possessions Limits

- I. Date of Initial Statement of Reasons: December 13, 2013
- II. Dates and Locations of Scheduled Hearings:
- (a) Notice Hearing: Date: December 11, 2013
Location: San Diego, CA
- (b) Discussion Hearing: Date: February 5, 2014
Location: Sacramento, CA
- (c) Adoption Hearing: Date: March 19, 2014
Location: Santa Rosa, CA
- III. Description of Regulatory Action:
- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:
- The Pacific Fishery Management Council (PFMC) coordinates west coast management of recreational and commercial ocean salmon fisheries in the federal fishery management zone (three to 200 miles offshore) along the coasts of Washington, Oregon and California. The annual PFMC ocean salmon regulation recommendations are subsequently implemented by the National Marine Fisheries Service (NMFS) effective on May 1 of each year.
- California's recreational salmon fishing regulations need to conform to the federal regulations to achieve optimum yield in California under the Federal Salmon Fishery Management Plan. The Fish and Game Commission (Commission) adopts regulations for the ocean salmon recreational fishery in State waters (zero to three miles offshore) which are consistent with these federal fishery management goals.
- It is critical to have consistent State and federal regulations establishing season dates, bag/size limits and other management measures, and also critical that the State and federal regulations be effective concurrently. Conformance with federal regulations is also necessary to maintain continued State authority over its recreational salmon fishery and avoid federal preemption under the Magnuson-Stevens Fishery Conservation Act [16 USC §1856 (b)(1)].

On May 1, 2013, NMFS implemented the 2013 federal ocean salmon regulations, which included the PFMC's recommendation to open the California ocean salmon recreational fishing season south of Horse Mountain on April 5, 2014. While federal waters south of Horse Mountain will open on April 5, 2014, State waters in this area will not open unless the Commission takes regulatory action to do so.

The 2014 season opening dates were not adopted into the State's ocean salmon regulations in 2013 as a matter of precaution, in order to account for the possibility that these dates, along with minimum size limits, bag limits, and open fishing days, or other management measures, may be modified by NMFS and PFMC based on the most up-to-date salmon abundance information. Fishery monitoring and escapement information needed for target stocks and salmon species of special concern, including Sacramento River Winter-run Chinook which is listed as endangered under both federal and State Endangered Species Acts (ESAs), is not available until the winter and early spring of 2014.

Concurrent Regulatory Action

The Commission will consider the most up-to-date information before determining if ocean salmon fishing should be authorized for April 2014. The proposed regulations would allow the Commission to adopt the April 5 opening date, or a later date in April, along with other fishery management measures for State waters that would be effective through April 30, 2014.

Two separate Commission actions are necessary to conform the State regulations to federal regulations that will apply in 2014. The current proposed regulation would amend subsection 27.80 (c), establishing salmon fishing regulations for the month of April 2014, and add a new subsection 27.80 (e), increasing the recreational salmon possession limit on land to two daily bag limits. In addition, recreational salmon fishing regulations for May 1 through the end of 2014 will be considered in a separate rulemaking action, tentatively scheduled for adoption in April 2014.

Present Regulations

Regulations for 2013 [subsections 27.80 (c) and (d)] authorized ocean salmon recreational fishing seven days per week north of Horse Mountain including Humboldt Bay from May 1 to September 8, 2013. Between Horse Mountain and Point Arena, ocean salmon recreational fishing was authorized seven days per week from April 6 to November 10, 2013. Between Point Arena and Pigeon Point, ocean salmon recreational fishing was authorized seven days per week from April 6 to November 10, 2013, except during June 1 through July 9, 2013 when salmon fishing was closed on Mondays and Tuesdays. Areas south of Pigeon Point had an ocean salmon recreational fishing season seven days per week from April 6 to October 6, 2013, except during June 1 through July 9, 2013 when salmon fishing was closed on Mondays and Tuesdays. The bag limit for all areas in 2013 was two fish per day (all species except coho). Areas north of Point

Arena had a minimum size limit of 20 inches total length. The area between Point Arena and Pigeon Point had a minimum size limit of 24 inches total length through July 31, 2013 and 20 inches total length thereafter. Areas south of Pigeon Point had a minimum size limit of 24 inches total length. Since the existing regulations pertained only to the 2013 season, amendment of these regulations is essential to allow for any fishing in State waters during 2014.

Current regulations (Section 1.17) provide that not more than one daily bag limit of fish may be taken or possessed unless otherwise authorized. Section 27.80 does not authorize the possession of more than the daily bag limit of salmon taken in ocean waters.

Proposed Regulations

For public notice purposes to facilitate Commission discussion, the Department of Fish and Wildlife is proposing the following regulations to encompass the range of federal ocean salmon regulations that are expected to be in effect April 5 through April 30, 2014. This approach will allow the Commission to adopt State ocean salmon recreational fishing regulations to conform to those in effect in federal ocean waters shortly after the federal rules are promulgated.

- (1) North of Horse Mountain and in Humboldt Bay: The fishery shall remain closed in this area during April. The remainder of the 2014 season will be decided in April by the PFMC and Commission and the section will be amended pursuant to the regulatory process.
- (2) Between Horse Mountain and Point Arena: The season, if any, may open on a date within the range of April 5 through April 30, 2014. The proposed daily bag limit will be from zero to two fish, and the proposed minimum size will be from 20 to 26 inches total length. The exact opening date, along with daily bag limit, minimum size, and days of the week open will be determined by the Commission, considering federal regulations applicable to this area for April 2014.
- (3) Between Point Arena and Pigeon Point: The season, if any, may open on a date within the range of April 5 through April 30, 2014. The proposed daily bag limit will be from zero to two fish, and the proposed minimum size will be from 20 to 26 inches total length. The exact opening date, along with daily bag limit, minimum size, and days of the week open will be determined by the Commission, considering federal regulations applicable to this area for April 2014.
- (4) Between Pigeon Point and Point Sur: The season, if any, may open on a date within the range of April 5 through April 30, 2014. The proposed daily bag limit will be from zero to two fish, and the proposed minimum size will be from 20 to 26 inches total length. The exact opening date, along with daily bag limit, minimum size, and days of the

week open will be determined by the Commission, considering federal regulations applicable to this area for April 2014.

- (5) South of Point Sur: The season, if any, may open on a date within the range of April 5 through April 30, 2014. The proposed daily bag limit will be from zero to two fish, and the proposed minimum size will be from 20 to 26 inches total length. The exact opening date, along with daily bag limit, minimum size, and days of the week open will be determined by the Commission, considering federal regulations applicable to this area for April 2014.

In addition, the proposed regulation will provide an ocean salmon possession limit of up to two daily bag limits when on land. However, on a vessel in ocean waters, the boat limit for salmon shall be determined by the single daily bag limit and the number of anglers pursuant to subsection 27.60(c), Title 14, CCR. In the regulatory subsections for each subarea, reference to the general possession limit (Section 1.17) will be replaced with a reference to new subsection 27.80(e) which will specify the possession limit. The exact possession limits will be determined by the Commission, considering the federal regulations applicable to each subarea.

Other changes are proposed to clarify the existing regulations.

It is the policy of this State to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction and influence of the State for the benefit of all the citizens of the State and to promote the development of local fisheries and distant-water fisheries based in California in harmony with international law respecting fishing and the conservation of the living resources of the ocean and other waters under the jurisdiction and influence of the State. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use, taking into consideration the necessity of regulating individual sport fishery bag limits to the quantity that is sufficient to provide a satisfying sport. Adoption of scientifically-based ocean salmon seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations of salmon to ensure their continued existence.

The benefits of the proposed regulations are in concurrence with federal law, sustainable management of ocean salmon resources, and promotion of businesses that rely on recreational ocean salmon fishing.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 202, 205, 220, 240, 316.5 and 2084, Fish and Game Code.

Reference: Sections 200, 202, 205, 316.5 and 2084, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None.

- (d) Identification of Reports or Documents Supporting Regulation Change:

[Pacific Fishery Management Council. April 2013. Preseason Report III: Council Adopted Management Measures and Environmental Assessment Part 3 for 2013 Ocean Salmon Fishery Regulations. 7700 NE Ambassador Place, Suite 101, Portland, Oregon 97220.](#)

[Economic Impact Assessment](#)

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public meetings are being held prior to the notice publication. The 45-day comment period provides adequate time for review of the proposed amendments.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

No alternatives were identified.

- (b) No Change Alternative:

The no change alternative would maintain existing regulations which do not provide an ocean salmon recreational fishing season for 2014. In the case of possession limits, the no change alternative would leave the possession limit in place as specified in Section 1.17. Federal regulations are anticipated to open the ocean salmon recreational fishing regulations south of Horse Mountain on April 5, 2014. The State must conform its ocean recreational fishing regulations for salmon in State waters (zero to three miles offshore) to the federal regulations for consistency and to avoid public confusion. Preemption of State regulatory authority by the NMFS could occur if State regulations are in conflict with federal regulations.

- (c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are necessary.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Department anticipates status quo fishing levels for April 2014 as compared the 2013 April ocean salmon sport fishing season.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate that the proposed regulations will have any impact on the creation or elimination of jobs, the creation or elimination of businesses or the expansion of businesses in California.

The Commission anticipates benefits to the health and welfare of California residents. Salmon sport fishing contributes to increased mental health of its practitioners, provides opportunities for multi-generational family activities and promotes respect for California's environment by the future stewards of California's natural resources.

The Commission anticipates benefits to the State's environment in the sustainable management of salmon resources.

Additional benefits of the proposed regulations are concurrence with federal law, and promotion of businesses that rely on recreational ocean salmon fishing.

The Commission does not anticipate benefits to worker safety.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private

person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs Mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

- (h) Effect on Housing Costs:

None.

Informative Digest (Policy Statement Overview)

The Pacific Fishery Management Council (PFMC) coordinates west coast management of recreational and commercial ocean salmon fisheries in the federal fishery management zone (three to 200 miles offshore) along the coasts of Washington, Oregon and California. The annual PFMC ocean salmon regulation recommendations are subsequently implemented by the National Marine Fisheries Service (NMFS) effective on May 1 of each year.

California's recreational salmon fishing regulations need to conform to the federal regulations to achieve optimum yield in California under the Federal Salmon Fishery Management Plan. The Fish and Game Commission (Commission) adopts regulations for the ocean salmon recreational fishery in State waters (zero to three miles offshore) which are consistent with these federal fishery management goals.

Present Regulations

Current regulations authorized ocean salmon recreational fishing seven days per week north of Horse Mountain including Humboldt Bay from May 1 to September 8, 2013. Between Horse Mountain and Point Arena, ocean salmon recreational fishing was authorized seven days per week from April 6 to November 10, 2013. Between Point Arena and Pigeon Point, ocean salmon recreational fishing was authorized seven days per week from April 6 to November 10, 2013, except during June 1 through July 9, 2013 when salmon fishing was closed on Mondays and Tuesdays. Areas south of Pigeon Point had an ocean salmon recreational fishing season seven days per week from April 6 to October 6, 2013, except during June 1 through July 9, 2013 when salmon fishing was closed on Mondays and Tuesdays. For all areas in 2013, the bag limit was two fish per day (all species except coho). Areas north of Point Arena had a minimum size limit of 20 inches total length. The area between Point Arena and Pigeon Point had a minimum size limit of 24 inches total length through July 31, 2013 and 20 inches total length thereafter. Areas south of Pigeon Point had a minimum size limit of 24 inches total length. Current regulations also provide that not more than one daily bag limit of recreationally taken ocean salmon may be possessed.

On May 1, 2013, NMFS implemented the 2013 federal ocean salmon regulations, which included the PFMC's recommendation to open the California ocean salmon recreational fishing season south of Horse Mountain on April 5, 2014. While federal waters south of Horse Mountain will open on April 5, 2014, State waters in this area will not open unless the Commission takes regulatory action to do so.

Proposed Regulations

Two separate Commission actions are necessary to conform the State regulations to federal rules that will apply in 2014. The current proposed regulation would amend subsection 27.80 (c), establishing salmon fishing regulations for the month of April 2014, and add a new subsection 27.80 (e), increasing the recreational salmon possession limit on land to two daily bag limits. In addition, recreational salmon fishing regulations for May 1 through the end of 2014 will be considered in a separate rulemaking action, tentatively scheduled for adoption in April 2014.

For public notice purposes to facilitate Commission discussion, the Department of Fish and Wildlife is proposing the following regulations to encompass the range of federal ocean salmon regulations that are expected to be in effect April 5 through April 30, 2014. This approach will allow the Commission to adopt State ocean salmon recreational fishing regulations to conform to those in effect in federal ocean waters.

- (1) North of Horse Mountain and in Humboldt Bay: The fishery shall remain closed in this area during April. The remainder of the 2014 season will be decided in April by the PFMC and Commission and the section will be amended pursuant to the regulatory process.
- (2) South of Horse Mountain: The season, if any, may open on a date within the range of April 5 through April 30, 2014. The proposed daily bag limit will be from zero to two fish, and the proposed minimum size will be from 20 to 26 inches total length. The exact opening dates, along with daily bag limit, minimum size, and days of the week open may be different for each subarea and will be determined by the Commission, considering federal regulations applicable to each subarea for April 2014.

In addition, the proposed regulation will provide an ocean salmon possession limit of up to two daily bag limits when on land. However, on a vessel in ocean waters, the boat limit for salmon shall be determined by the single daily bag limit and the number of anglers pursuant to subsection 27.60(c), Title 14, CCR. In the regulatory subsections for each subarea, reference to the general possession limit (Section 1.17) will be replaced with a reference to new subsection 27.80(e) which will specify the possession limit. The exact possession limits will be determined by the Commission, considering the federal regulations applicable to each subarea.

Other changes are proposed to clarify the existing regulations.

The benefits of the proposed regulations are concurrence with federal law, sustainable management of ocean salmon resources, and promotion of businesses that rely on recreational ocean salmon fishing.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The legislature has delegated authority to the Commission to adopt sport fishing regulations in general (sections 200, 202 and 205, Fish and Game Code) and salmon sport fishing regulations specifically (Section 316.5, Fish and Game Code). The proposed regulations are consistent with regulations for sport fishing in marine protected areas (Section 632, Title 14, CCR) and with general sport fishing regulations in chapters 1 and 4 of subdivision 1 of Division 1, Title 14, CCR. Commission staff has searched the California Code of Regulations and has found no other State regulations related to the recreational take of salmon in the ocean.